



Financial Crimes Enforcement Network

A bureau of the U.S. Department of the Treasury

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For more information, please contact FinCEN's Office of Public Affairs at (703) 905-3770.

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CONTACT: Steve Hudak

703-905-3770

FinCEN Seeks Comments on AML Plan for Non-Bank Mortgage Lenders and Originators

VIENNA, Va. – The Financial Crimes Enforcement Network (FinCEN) today issued an [advance notice of proposed rulemaking](#) (ANPRM) to solicit public comment on a wide range of questions pertaining to the possible application of anti-money laundering (AML) program and suspicious activity report (SAR) regulations to non-bank residential mortgage lenders and originators.

“As primary providers of mortgage finance who generally deal directly with consumers, these lenders and originators are in a unique position to assess and identify money laundering risks and possible mortgage fraud while directly assisting consumers with their financial needs and protecting them from the abuses of financial crime,” said FinCEN Director James H. Freis, Jr.

In April, the Department of the Treasury and FinCEN coordinated an inter-agency effort with the U.S. Department of Justice (DOJ), the Department of Housing and Urban Development (HUD), the Federal Trade Commission (FTC), and state officials to announce new [initiatives](#) to target foreclosure rescue scams and loan modification fraud. These initiatives are helping to coordinate information and resources across agencies to maximize targeting and efficiency in fraud investigations, alert financial institutions to emerging schemes, step up enforcement actions and educate consumers to help those in financial trouble avoid becoming the victims of a loan modification or foreclosure rescue scam. FinCEN is seeing the results of these efforts with banks already filing SARs under the guidance issued in April. Utilizing the initiative’s advanced targeting methods, FinCEN has so far made 10 case referrals, involving over 80 suspects, to law enforcement investigators. FinCEN, at the request of civil and criminal law enforcement, is also contributing to 35 ongoing investigations, involving multiple suspects and hundreds of Bank Secrecy Act reports.

This coordinated effort combined with today’s announcement that FinCEN is considering applying AML program and SAR regulations to non-bank residential mortgage lenders and

originators comes when millions of vulnerable homeowners are seeking assistance under the Administration's Making Home Affordable program. These initiatives will help prevent criminal actors from perpetrating predatory schemes.

In FinCEN's recently issued [mortgage fraud reports](#), SAR analysis showed non-bank mortgage lenders and originators initiated many of the mortgages that were associated with SAR filings. In addition, although its focus is limited to gathering information relevant to the possible AML responsibilities of this industry sector, this ANPRM is complementary to ongoing regulatory reform and consumer protection initiatives, as regulators and consumer protection agencies also benefit from the data provided by SARs.

SARs filed with FinCEN by financial institutions are a critical source of information for law enforcement in investigating and prosecuting mortgage fraud related crimes. FinCEN believes that new regulations requiring non-bank residential mortgage lenders and originators to adopt AML programs and report suspicious transactions could augment FinCEN's initiatives in this area. In addition, in 2008, the Secure and Fair Enforcement for Mortgage Licensing Act (SAFE Act) became law. Among other things, the SAFE Act requires the development of a nationwide licensing system and registry for certain mortgage professionals that may serve to complement any related FinCEN efforts in the future.

"Broad public input through this ANPRM will aid policymakers seeking to ensure the appropriate regulatory regime for this industry sector," noted Freis. "These financial professionals are ideally positioned to contribute to the promotion of safety and integrity in the U.S. mortgage marketplace."

Under the Bank Secrecy Act, FinCEN can issue regulations requiring financial institutions to keep records and file reports determined to have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism. Federally regulated depository institutions are already required to have AML programs. This ANPRM considers adding companies that perform certain services with respect to residential mortgages, analogous requirements to those that currently apply to depository institutions performing those same services.

The ANPRM, as submitted to the *Federal Register*, is available on www.FinCEN.gov. Comments are due to FinCEN 30 days after publication in the *Federal Register*.

[UPDATE: The [ANPRM](#) was published in the Federal Register on July 21, 2009. Written comments must be received on or before August 20, 2009.]

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The mission of the Financial Crimes Enforcement Network is to safeguard the financial system from the abuses of financial crime, including terrorist financing, money laundering, and other illicit activity. We achieve this mission by: administering the Bank Secrecy Act; supporting law enforcement, intelligence, and regulatory agencies through sharing and analysis of financial

intelligence; building global cooperation with our counterpart financial intelligence units; and networking people, ideas, and information.